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November 4, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-B201
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable Susan Ness
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-B115
Washington, D.C. 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-A302
Washington, D.C. 20554

The Honorable Michael Powell
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-A204
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The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 Twelfth Street, S.W., Room 8-C302
Washington, D.C. 20554

**Re: Ex Parte Presentation
WT Docket No. 94-102**

Dear Chairman Kennard and Commissioners:

BellSouth Cellular Corp., AirTouch Communications, AT&T Wireless Services, Inc., US
West Wireless, Western Wireless Corporation, VoiceStream Wireless, GTE Mobilnet, U.S.
Cellular, Aerial Communications, Inc., Omnipoint Communications, the Cellular

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Telecommunications Industry Association and the Personal Communications Industry Association (the “Carriers”) hereby urge the Commission to refrain from further modifying its rules governing wireless enhanced 911 (“E911”) implementation. As discussed below, modification of the E911 rules is unlikely to speed implementation and may actually hinder it. Moreover, elimination of the cost recovery requirement will have a negative impact on the deployment of wireless E911, particularly for small, rural carriers.

All parties to this proceeding understand the importance of 911 services to the public, and nearly all parties have recognized that effective cost recovery mechanisms are essential to the deployment of E911. Nevertheless, a single party — APCO — has been actively lobbying the FCC to eliminate the requirement that a cost recovery mechanism be in place before a commercial mobile radio service (“CMRS”) carrier can be required to provide E911. APCO claims that the cost recovery requirement is needlessly delaying E911 implementation. APCO is the only party that would have the FCC believe that E911 implementation would be complete, or at least much further along, but for the cost recovery condition contained in Section 20.18 of the Commission’s rules. The Carriers submit that the fundamental premise of APCO’s efforts to eliminate the cost recovery condition is insupportable: the delay associated with E911 implementation cannot be primarily attributed to the cost recovery requirement.

Congress recently passed S.800, the Wireless Communications and Public Safety Act of 1999, which has become law. In this law, Congress emphasizes the need for a consensus approach to E911 implementation. Section 3(b) directs the Commission to “consult and cooperate with State and local officials responsible for emergency services and public safety, the telecommunications industry (specifically including the cellular and other wireless telecommunications service providers), the motor vehicle manufacturing industry, emergency medical service providers and emergency dispatch providers, transportation officials, special 9-1-1 districts, public safety, fire service and law enforcement officials, consumer groups, and hospital emergency and trauma care personnel (including emergency physicians, trauma surgeons, and nurses).” It would be inconsistent with the intent of Congress for the Commission to ignore the broad consensus among affected groups that effective cost recovery mechanisms are an essential prerequisite to E911 deployment, and instead bend to the wishes of a single group.

Since adoption of CC Docket No. 94-102, CMRS carriers and PSAPs have worked diligently in a majority of states to ensure that the proper foundation is in place to implement Phase I and Phase II wireless E911. To that end, more than 30 states have enacted wireless E911 legislation. Legislation is just the first step in the implementation process, however. A major component of E911 implementation is coordination among and between the various CMRS providers and individual PSAPs. State wireless E911 boards, established by legislation in many states, have been largely responsible for the coordination. Their legislated “power of the purse” has been quite effective at securing compromise and cooperation. As a result, in many states where legislation has been enacted, state E911 boards and PSAPs are now actively engaged in E911 implementation. Funds have been placed in CMRS cost recovery accounts and PSAPs have been receiving funds to compensate for their handling of wireless E911 calls.

Although PSAPs and state boards are actively engaged in the E911 implementation process, many PSAPs have yet to request Phase I information from CMRS carriers. There are a number of operational, technical, and financial issues that must be resolved by PSAPs before they can utilize such information. As recognized by the parties to the Consensus Report:

The engineering, development, and deployment efforts required to upgrade the infrastructure for wireless E9-1-1 Phase I service could take well over a year, even if the financial impacts were understood, and funding or cost recovery were not an issue.¹

Thus, the delay associated with E911 implementation cannot be attributed solely to the need to adopt cost recovery rules. Despite APCO's suggestion that elimination of the cost recovery condition would result in the immediate provision of E911 service, carriers can only implement E911 once PSAPs are ready for the information. The record to date clearly establishes that many PSAPs are simply not ready for E911. Moreover, by removing the cost recovery requirement, the Commission is walking away from the only leverage it has to ensure that States and PSAPs make the needed investment in their infrastructures for wireless E9-1-1.

In this regard, the Carriers note that it is not merely CMRS carriers that oppose modification of the Commission's E911 rules with respect to cost recovery. NENA has stated that modification of the cost recovery requirement risks ongoing implementation efforts and jeopardizes successful cost recovery and implementation arrangements that are currently in place.² Similarly, NASNA has stated that the current FCC cost recovery rules "permit the parties and the process to work appropriately . . . and should not be modified at this time."³ The Carriers believe that these public safety organizations recognize the benefits that current cost recovery rules provide PSAPs. These benefits include funding for critical addressing programs required for Phase I, mapping programs needed for Phase II, and infrastructure upgrades needed for both phases. Elimination of this funding would significantly delay PSAP ability to use the E9-1-1 data provided under these Phases. In fact, the Carriers are not aware of any parties, other than APCO, who currently support elimination of the existing cost recovery rules.

In short, wireless carriers and PSAPs have been working together with State legislatures to ensure that all the groundwork is laid for an effective and timely implementation of E911. APCO's attempt to persuade the Commission to upset these cooperative efforts is contrary to the direction of Congress in Section 3(b) of S.800 that the FCC "encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs, based on coordinated statewide plans, including seamless, ubiquitous, reliable wireless

¹ See Consensus Report, at 16.

² See Consensus Report, NENA Addendum Regarding Cost Recovery, at 2.

³ See Consensus Report, NASNA Addendum Regarding Cost Recovery.

telecommunications networks and enhanced wireless 9-1-1 service.” Elimination of the cost recovery requirement will *not* carry out the congressional objective of supporting these state efforts to establish a coordinated approach to E911 deployment; it will undermine them.

Elimination of the cost recovery requirement will tend to dissolve the common purpose underlying the cooperative, consensus approach that has prevailed to date. Each party will be looking for ways to ensure its own funding. This approach would bifurcate cost recovery into CMRS and PSAP components. CMRS carriers would be forced to develop their own means of cost recovery, and poorly funded PSAPs would be forced to seek E911 implementation legislation and funding without the support of CMRS carriers.

If the Commission eliminates the cost recovery requirement, States that have no cost recovery legislation will have to start over, without the consensus support that has led to successful legislative approaches to date. States that have already enacted legislation may find that the premises of that legislation are undone, and indeed such legislation may be in conflict with the modified FCC rules, requiring repeal or amendment to the existing law or the enactment of further legislation. Moreover, in these states, funds that have accumulated for CMRS providers in accounts designated for cost recovery by legislation may have to be returned to consumers. Thus, any FCC action that alters the implementation process can only serve to slow down or even reverse the progress that has been made to date.


Essentially, APCO’s approach would make it even more difficult for PSAPs to receive the funding necessary to prepare for E911 implementation. Even if carriers and PSAPs were able to obtain their own funding, this would only be the first step toward statewide implementation. Carriers and PSAPs still would need to develop a cooperative and coordinated mechanism to address solutions to statewide implementation issues.


Moreover, the establishment of E911 is a complex and difficult process, not only for wireless carriers, but also for PSAPs. Both need to establish a means for funding implementation before it will occur. There is no purpose served in requiring wireless carriers to implement E911 before PSAPs are ready. All parties need to work together cooperatively to make it work. Elimination of the requirement that a cost recovery mechanism be in place for wireless deployment will damage this cooperative approach.

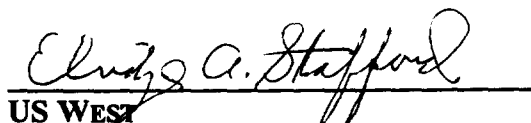
The cooperative, consensus approach to E911 will speed its deployment, while APCO’s attempt to force E911 deployment without regard to cost recovery will actually slow deployment. The elimination of the existing requirement that cost support mechanisms be in place before wireless carriers are obligated to deploy E911 would fly in the face of Congressional intention, as expressed in Section 3(b), that “[n]othing in this subsection shall be construed to authorize or require the Commission to impose obligations or costs on any person.” The Carriers encourage the Commission to work with the states to eliminate all of the barriers to E911 deployment instead of placing the burden of deployment solely on one side.


Accordingly, the Commission should not take any steps that undermine the successful cost recovery efforts to date. To the extent states and localities have adopted cost recovery mechanisms, the Commission should not eliminate the ability of CMRS carriers to use these mechanisms to recover E911 costs. Instead, the Commission should clearly acknowledge the benefits generated by existing state E911 legislation and should encourage states which have adopted such legislation to continue supporting the legislation, as well as the cooperative efforts of carriers, PSAPs, and state wireless E911 boards.

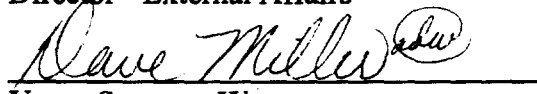
For all these reasons, the Carriers urge the Commission not to eliminate the cost recovery rules. It should be careful not to upset the successful efforts that have been made to date, and avoid preempting or otherwise disturbing consensus legislation. Furthermore, the elimination of the cost recovery requirement in an effort to speed wireless E911 deployment would have the unintended consequences of placing an inordinate burden upon small, rural carriers. Finally, the Commission should ensure that it has heard the whole story before it makes a decision — no decision to eliminate the cost recovery requirement should be made before the staff has had an opportunity to review and consider the technical, operational, and financial challenges confronted by PSAPs. E911 service can only come into being when these challenges are solved.

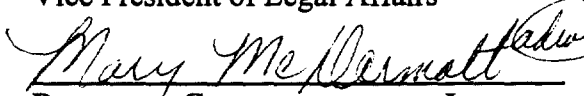

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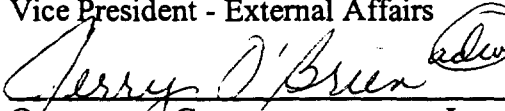
Respectfully submitted,

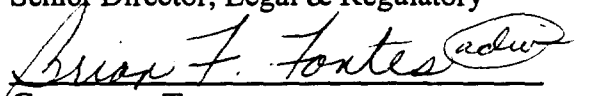

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